



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hocking International Chemical Corporation
File: B-225842
Date: March 20, 1987

DIGEST

Contractor provided chemical supplies ordered by Naval officer who had no authority to do so. Navy declined ratification because it could not concur that sales price was a "fair and reasonable" price as required by regulations. Contractor may be paid on quantum valebat basis because supplies constituted a permissible procurement, Government received and accepted benefit, and the contractor acted in good faith. However, recovery is limited to amount Navy determined supplies would have cost had proper competitive procurement procedures been followed.

DECISION

The Commanding Officer, Fleet Accounting and Disbursing Center, U.S. Pacific Fleet, via the Commander, Navy Accounting and Finance Center, requested our decision on whether the Navy may pay the Hocking International Chemical Corporation (Hocking) for products delivered to the USS Schenectady, and if so, the proper amount of that payment. As explained below, we conclude that payment to Hocking is authorized in the amount of \$124.12.

BACKGROUND

On July 1, 1985, sales personnel from the Hocking Company called upon the USS Schenectady, then docked in San Diego, and spoke with a Lt. Cdr. Feinberg. Lt. Cdr. Feinberg approved five of the chemical supplies offered by Hocking and placed an order for them. On July 10, the supplies were delivered and Lt. Cdr. Feinberg gave Hocking a requisition number. The ship's personnel used the supplies. On the delivery date, Hocking billed the USS Schenectady for the supplies in the amount of \$344.15.

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The vessel's supply officer, upon receiving the invoice, refused payment because Lt. Cdr. Feinberg had no authority to place the order. The invoice was then referred to the San Diego Naval Supply Center for possible ratification as an unauthorized commitment in accordance with the Federal Acquisition Regulations (FAR). Under the Department of Defense FAR Supplement, the head of a contracting activity may ratify an unauthorized commitment provided the contracting officer determines among other things that the price is "fair and reasonable." DOD FAR Supp. § 1.670-4(b). After reviewing the statement provided by the USS Schenectady which included a price justification, the Naval Supply Center's contracting officer was unable to make such a determination. Consequently, the unauthorized commitment was not ratified. Navy then referred Hocking's claim to us.

DISCUSSION

There is a well-established rule that the Government is not bound by the unauthorized acts of its employees. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Where a valid contract was never executed and, as here, the agency is unable to ratify the unauthorized agreement, the Government has no legal obligation to pay contractors who have provided goods or services. E.g., B-210808, May 24, 1984. However, under GAO's claims settlement authority (31 U.S.C. § 3702), the Comptroller General may authorize payment on a quantum meruit or quantum valebat basis.

Where a performance by one party has benefited another, even in the absence of an enforceable contract between them, equity requires that the party receiving the benefit should not gain a windfall at the expense of the performing party. The law implies a promise to pay by the receiving party the reasonable value of the benefit received. Before we will authorize a quantum valebat payment, four factors must be present. We must determine, based upon the record submitted, that: (1) the goods or services would have been a permissible procurement had correct procedures been followed; (2) the Government received and accepted a benefit; (3) the contractor acted in good faith; and (4) the amount to be authorized represents the reasonable value of the benefit received. 63 Comp. Gen. 579 (1984).

Applying these factors in this case, we conclude that Hocking may be paid on the basis of quantum valebat. There is no question that the chemical supplies would have been a permissible procurement if proper procedures had been followed and that Hocking acted in good faith. The ship's personnel used the supplies as stated above, and so the Government clearly received and accepted a benefit.

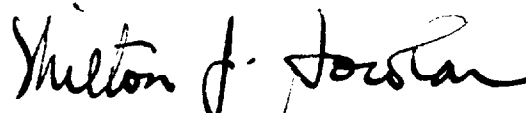
We must, however, limit our payment authorization to \$124.12. Under the quantum valebat theory, recovery is measured by the reasonable value of the benefit received, which may or may not be the same as the sales or contract price. In his letter to Hocking denying ratification of the company's invoice, the contracting officer stated:

"* * * Based upon the information provided by the USS SCHENECTADY, I am unable to determine that your invoice in the amount of \$344.15 represents a fair and reasonable price.

"If a contract had been awarded for the supplies provided by Hocking International Chemical Corporation using competitive procurement procedures and based upon the information provided, a price in the vicinity of \$124.00 for the same supplies could have been achieved."

The contracting officer then invited Hocking to respond "If you have any information which may have a bearing on the reasonableness of the price you have billed or if you are willing to accept a price of \$124.12 * * *." Hocking did not provide any further information but merely reiterated its claim for the full sales price. Navy's determination of reasonable value was made by an office with expertise in procuring comparable items, and we have neither reason nor basis to question it.

Accordingly, on the basis that \$124.12 represents the reasonable value of the benefit the Government received from Hocking, payment is authorized in that amount.

for 
Comptroller General
of the United States